

Infrastructure Bill [HL]

LORDS AMENDMENTS TO, CONSEQUENTIAL ON, OR IN LIEU OF, CERTAIN COMMONS AMENDMENTS

[The page and line references are to Bill 124, the bill as first printed for the Commons.]

After Clause 43

COMMONS AMENDMENT 20

20 Insert the following new Clause –

“Advice on likely impact of onshore petroleum on the carbon budget

- (1) The Secretary of State must from time to time request the Committee on Climate Change to provide advice (in accordance with section 38 of the CCA 2008) on the impact which combustion of, and fugitive emissions from, petroleum got through onshore activity is likely to have on the Secretary of State’s ability to meet the duties imposed by –
 - (a) section 1 of the CCA 2008 (net UK carbon account target for 2050), and
 - (b) section 4(1)(b) of the CCA 2008 (UK carbon account not to exceed carbon budget).
- 13 (2) As soon as practicable after each reporting period, the Secretary of State must produce a report setting out the conclusions that the Secretary of State has reached after considering the advice provided by the Committee on Climate Change during that reporting period in response to any request made under subsection (1).
- 17 (3) The Secretary of State must lay a copy of any such report before Parliament.
- (4) In this section –
 - “CCA 2008” means the Climate Change Act 2008;
 - “petroleum got through onshore activity” means petroleum got from the strata in which it exists in its natural condition by activity

- carried out on land in England and Wales (excluding land covered by the sea or any tidal waters);
- “petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998 (see section 1 of that Act);
- “reporting period” means –
- (a) the period ending with 1 April 2016, and
 - (b) each subsequent period of 5 years.”

LORDS AGREEMENT, AMENDMENT TO THE COMMONS AMENDMENT AND
CONSEQUENTIAL AMENDMENT

The Lords agree with the Commons in their Amendment 20, do propose Amendment 20B as an amendment thereto; and do propose Amendment 20C as a consequential amendment to the Bill –

- 20B** Line 13, leave out from “must” to end of line 17 and insert “–
- (a) lay before Parliament a copy of advice received under subsection (1) during the reporting period, and
 - (b) lay before Parliament a draft of regulations under subsection (3) or a report under subsection (5).
- (3) Regulations under this subsection are regulations providing for section 38 to cease to have effect to such extent as may be specified in the regulations.
 - (4) No provision made in regulations under subsection (3) has effect in relation to anything done in exercise of the right of use conferred by section 38 before the date on which the regulations come into force.
 - (5) A report under this subsection is a report explaining why a draft of regulations under subsection (3) has not been laid.
 - (6) Regulations under this section may make such consequential amendments or repeals of sections 38 to 43 and this section as the Secretary of State considers appropriate.”
- 20C** Page 52, line 31, after “42” insert “or section (*Advice on likely impact of onshore petroleum on the carbon budget*)”

COMMONS AMENDMENT 21

- 21** Insert the following new Clause –

“Hydraulic fracturing: necessary conditions

Any hydraulic fracturing activity can not take place:

- (a) unless an environmental impact assessment has been carried out;
- (b) unless independent inspections are carried out of the integrity of wells used;
- (c) unless monitoring has been undertaken on the site over the previous 12 month period;
- (d) unless site-by-site measurement, monitoring and public disclosure of existing and future fugitive emissions is carried out;

- (e) in land which is located within the boundary of a groundwater source protection zone;
- (f) within or under protected areas;
- (g) in deep-level land at depths of less than 1,000 metres;
- (h) unless planning authorities have considered the cumulative impact of hydraulic fracturing activities in the local area;
- (i) unless a provision is made for community benefit schemes to be provided by companies engaged in the extraction of gas and oil rock;
- (j) unless residents in the affected area are notified on an individual basis;
- (k) unless substances used are subject to approval by the Environment Agency;
- (l) unless land is left in a condition required by the planning authority; and
- (m) unless water companies are consulted by the planning authority.”

LORDS DISAGREEMENT AND AMENDMENTS IN LIEU

The Lords disagree with the Commons in their Amendment 21, but do propose Amendments 21B, 21C and 21D in lieu –

21B Insert the following new Clause –

“Onshore hydraulic fracturing: safeguards

After section 4 of the Petroleum Act 1998 insert –

“4A Onshore hydraulic fracturing: safeguards

- (1) The Secretary of State must not issue a well consent that is required by an onshore licence for England or Wales unless the well consent imposes –
 - (a) a condition which prohibits associated hydraulic fracturing from taking place in land at a depth of less than 1000 metres; and
 - (b) a condition which prohibits associated hydraulic fracturing from taking place in land at a depth of 1000 metres or more unless the licensee has the Secretary of State’s consent for it to take place (a “hydraulic fracturing consent”).
- (2) A hydraulic fracturing consent is not to be issued unless an application for its issue is made by, or on behalf of, the licensee.
- (3) Where an application is made, the Secretary of State may not issue a hydraulic fracturing consent unless the Secretary of State –
 - (a) is satisfied that –
 - (i) the conditions in column 1 of the following table are met, and
 - (ii) the conditions in subsection (6) are met, and
 - (b) is otherwise satisfied that it is appropriate to issue the consent.

- (4) The existence of a document of the kind mentioned in column 2 of the table in this section is sufficient for the Secretary of State to be satisfied that the condition to which that document relates is met.
- (5) But the absence of such a document does not prevent the Secretary of State from being satisfied that that condition is met.

<i>Column 1: conditions</i>	<i>Column 2: documents</i>
1 The environmental impact of the development which includes the relevant well has been taken into account by the local planning authority	A notice given by the local planning authority that the environmental information was taken into account in deciding to grant the relevant planning permission
2 Appropriate arrangements have been made for the independent inspection of the integrity of the relevant well	A certificate given by the Health and Safety Executive that it— (a) has received a well notification under regulation 6 of the Borehole Sites and Operations Regulations 1995, (b) has received the information required by regulation 19 of the Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996, and (c) has visited the site of the relevant well
3 The level of methane in groundwater has, or will have, been monitored in the period of 12 months before the associated hydraulic fracturing begins	An environmental permit has been given by the relevant environmental regulator which contains a condition that requires compliance with a waste management plan which provides for monitoring of the level of methane in groundwater in the period of 12 months before the associated hydraulic fracturing begins
4 Appropriate arrangements have been made for the monitoring of emissions of methane into the air	An environmental permit which contains a condition requiring compliance with a waste management plan which provides for the monitoring of emissions of methane into the air for the period of the permit

<i>Column 1: conditions</i>	<i>Column 2: documents</i>
5 The associated hydraulic fracturing will not take place within protected groundwater source areas	A decision document given by the relevant environmental regulator (in connection with an environmental permit) which indicates that the associated hydraulic fracturing will not take place within protected groundwater source areas
6 The associated hydraulic fracturing will not take place within other protected areas	A notice given by the local planning authority that the area in respect of which the relevant planning permission has been granted does not include any land which is within any other protected areas
7 In considering an application for the relevant planning permission, the local planning authority has (where material) taken into account the cumulative effects of— (a) that application, and (b) other applications relating to exploitation of onshore petroleum obtainable by hydraulic fracturing	A notice given by the local planning authority that it has taken into account those cumulative effects
8 The substances used, or expected to be used, in associated hydraulic fracturing— (a) are approved, or (b) are subject to approval, by the relevant environmental regulator	An environmental permit has been given by the relevant environmental regulator which contains a condition that requires substances used in associated hydraulic fracturing to be approved by that regulator
9 In considering an application for the relevant planning permission, the local planning authority has considered whether to impose a restoration condition in relation to that development	A notice given by the local planning authority that it has considered whether to impose such a condition
10 The relevant undertaker has been consulted before grant of the relevant planning permission	A notice given by the local planning authority that the relevant undertaker has been consulted

<i>Column 1: conditions</i>	<i>Column 2: documents</i>
11 The public was given notice of the application for the relevant planning permission	A notice given by the local planning authority which confirms that the applicant for the relevant planning permission has certified that public notification requirements, as set out in a development order, have been met

- (6) The conditions mentioned in subsection (3)(a)(ii) are –
 - (a) that appropriate arrangements have been made for the publication of the results of the monitoring referred to in condition 4 in the table;
 - (b) that a scheme is in place to provide financial or other benefit for the local area.
- (7) A hydraulic fracturing consent may be issued subject to any conditions which the Secretary of State thinks appropriate.
- (8) A breach of such a condition is to be treated as if it were a breach of a condition of a well consent.

4B Section 4A: supplementary provision

- (1) “Associated hydraulic fracturing” means hydraulic fracturing of shale or strata encased in shale which –
 - (a) is carried out in connection with the use of the relevant well to search or bore for or get petroleum, and
 - (b) involves, or is expected to involve, the injection of –
 - (i) more than 1,000 cubic metres of fluid at each stage, or expected stage, of the hydraulic fracturing, or
 - (ii) more than 10,000 cubic metres of fluid in total.
- (2) For the purposes of deciding the depth at which associated hydraulic fracturing is taking place in land –
 - (a) the depth of a point in land below surface level is the distance between that point and the surface of the land vertically above that point; and
 - (b) in determining what is the surface of the land, any building or other structure on the land, and any water covering the land, must be ignored.
- (3) Subsections (1) and (2) apply for the purposes of section 4A and this section.
- (4) The Secretary of State must, by regulations made by statutory instrument, specify –
 - (a) the descriptions of areas which are “protected groundwater source areas”, and
 - (b) the descriptions of areas which are “other protected areas”, for the purposes of section 4A.

- (5) A statutory instrument which contains regulations under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) The Secretary of State must lay a draft of the first such regulations before each House of Parliament on or before 31 July 2015.
- (7) The Secretary of State must consult –
 - (a) the Environment Agency before making any regulations under subsection (4)(a) in relation to England;
 - (b) the Natural Resources Body for Wales before making any regulations under subsection (4)(a) in relation to Wales.
- (8) These expressions have the meanings given –
 - “development order” has the meaning given in section 59 of the Town and Country Planning Act 1990;
 - “environmental permit” means a permit granted under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2010;
 - “hydraulic fracturing consent” has the meaning given in subsection (1)(b);
 - “licensee” means the holder of the onshore licence for England or Wales;
 - “local planning authority” means –
 - (a) the planning authority to which the application for the relevant planning permission was made (unless the Secretary of State or Welsh Ministers are responsible for determining the application), or
 - (b) the Secretary of State or Welsh Ministers (if responsible for determining the application);
 - “onshore licence for England or Wales” means a licence granted under section 3 which authorises a person to search or bore for or get petroleum in those parts of the landward area (within the meaning of the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014) that are in England or Wales or are beneath waters (other than waters adjacent to Scotland);
 - “relevant environmental regulator” means –
 - (a) the Environment Agency, if the relevant well is situated in England, or
 - (b) the Natural Resources Body for Wales, if the relevant well is situated in Wales;
 - “relevant planning permission” means planning permission to be granted, or granted, in respect of development which includes the relevant well;
 - “relevant undertaker” means the water undertaker or sewerage undertaker in whose area of appointment the relevant well is located;
 - “relevant well” means the well to which a well consent relates;
 - “well consent” means a consent in writing of the Secretary of State to the commencement of drilling of a well.

- (9) The power of the Secretary of State to make regulations under section 4 includes power to make such amendments of the definition of “onshore licence for England or Wales” in this section as the Secretary of State considers appropriate in consequence of any other exercise of the power under section 4.
- (10) The Secretary of State may, by regulations made by statutory instrument—
- (a) make such amendments of column 2 of the table in section 4A as the Secretary of State considers appropriate, and
 - (b) make such other amendments of section 4A or this section as the Secretary of State considers appropriate in consequence of provision made under paragraph (a).
- (11) A statutory instrument which contains regulations under subsection (10) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.””

Clause 48

- 21C** Page 54, line 26, after “37” insert “and section (*Onshore hydraulic fracturing: safeguards*)”

In the Title

- 21D** Line 13, leave out from “provision” to “geothermal” in line 14 and insert “about onshore petroleum and”

Clause 47

COMMONS AMENDMENT 33

- 33** Page 53, line 35, at end insert “, and
2 () sections 38 to 43 extend to England and Wales only.”

LORDS AGREEMENT AND AMENDMENT TO THE COMMONS AMENDMENT

The Lords agree with the Commons in their Amendment 33, and do propose Amendment 33A as an amendment thereto –

- 33A** Line 2, after “43” insert “and section (*Onshore hydraulic fracturing: safeguards*)”

LORDS AMENDMENTS TO,
CONSEQUENTIAL ON, OR IN LIEU OF
CERTAIN COMMONS AMENDMENTS
TO THE
INFRASTRUCTURE BILL [HL]

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